

ROCKWELL AUTOMATION, INC.,	)	Case No. 2:13-cv-01616-RCJ-NJK
Plaintiff(s),	)	
vs.	)	ORDER DENYING DISCOVERY
	)	MOTIONS WITHOUT PREJUDICE
BECKHOFF AUTOMATION LLC, et al.,	)	(Docket Nos. 103, 107, 108, and 114)
	)	
Defendant(s).	)	
	)	

Pending before the Court are various discovery-related motions. Docket Nos. 103, 107, 108, and 114. Those motions relate to discovery sought against both Defendants Beckhoff Automation LLC and Beckhoff Automation GmbH. Since the motions were filed, United States District Judge Robert C. Jones stayed non-jurisdictional discovery against Defendant Beckhoff Automation GmbH. *See* Docket No. 126. The Court has now reviewed the parties' joint statement as to the impact of that stay on the pending discovery motions. Docket No. 131.

Defendant Beckhoff Automation LLC asserts that the majority of disputed discovery is not in its possession, custody or control because they are in the possession of Defendant Beckhoff Automation GmbH. *See* Docket No. 131 at 7-8. The Ninth Circuit has made clear that a party “controls” documents where it has a legal right to obtain the documents upon demand. *See, e.g., In re Citric Acid Litig.*, 191 F.3d 1090, 1107 (9th Cir. 1999) (quoting *United States v. Int’l Union of Petroleum & Indus. Workers*, 870 F.2d 1450, 1452 (9th Cir. 1989)). “The party seeking production of the documents . . . bears the burden of

1 proving that the opposing party has such control.” *Int’l Union of Petroleum & Indus. Workers*, 870 F.2d  
2 at 1452. Plaintiff asserts that the record is not sufficiently developed on this issue. *See id.* at 3-4.

3 The Court finds this issue not sufficiently developed at this time and hereby DENIES without  
4 prejudice the discovery motions (Docket Nos. 103, 107, 108, and 114). To the extent Defendant Beckhoff  
5 Automation LLC contends that the disputed discovery materials are not in its possession, custody or  
6 control, it shall so certify under Fed. R. Civ. P. 26(g) no later than June 16, 2014. To the extent Defendant  
7 Beckhoff Automation LLC has agreed to supplement its responses, *see* Docket No. 131 at 8, it shall do so  
8 no later than June 16, 2014. For any discovery that remains in dispute,<sup>1</sup> the parties shall promptly meet and  
9 confer, and Plaintiff may thereafter file a renewed motion to compel against Defendant Beckhoff  
10 Automation LLC no later than June 23, 2014. Any response shall be filed no later than June 30, 2014, and  
11 any reply shall be filed no later than July 3, 2014.

12 IT IS SO ORDERED.

13 DATED: June 9, 2014

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16 NANCY J. KOPPE  
17 United States Magistrate Judge  
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25 <sup>1</sup> In light of the procedural posture of the motions and the limited briefing on this issue from the  
26 parties, the Court does not herein make a final ruling regarding whether documents possessed by  
27 Defendant Beckhoff Automation GmbH are in the control of Defendant Beckhoff Automation LLC.  
28 Accordingly, Plaintiff may file a renewed motion as to such documents. To the extent Plaintiff includes  
such documents in any renewed motion, however, it must explain why the issue is not already settled to  
the contrary. *See Citric Acid*, 191 F.3d at 1108 (holding that American company did not have legal  
control over documents in possession of its foreign affiliate).